

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 545 OF 2005

Mr. Ghansham V. Kalro ..Appellant

Vs.

Bombay Municipal Corporation
and three orthers. ..Respondents

Mr. Glenn A. Lobo for Appellant.
Ms. Geeta Joglekar for Respondent-BMC.

CORAM: B.H. MARLAPALLE, J.

Date : July 25, 2005.

P.C.:

1. Heard Mr.Lobo the learned counsel for the appellant who was a plaintiff in L.C. Suit No.622 of 2004. In the said suit Contempt Notice of Motion No.2316 of 2004 and another Notice of Motion Nos.455 of 2004 and Notice of Motion No.1341 of 2004 were taken out. All these three Motions were decided by the impugned order dated 14-12-2004 by the learned Judge of the City Civil Court at Mumbai.

2. The learned Judge noted that the learned Advocate appearing for the plaintiff when called upon to argue motion in seriatim date wise, she insisted to

start hearing the arguments on Contempt Motion No.2316 of 2004. Her request was granted and when the learned Judge started reading the Contempt Motion, she immediately interrupted him and stated that the court must hear first Motion first. The learned Judge, therefore, stated that the parties could not be allowed to choose as per their sweet will.

3. As far as the Contempt Motion was concerned, the court below noted that there was no prima facie material regarding the alleged construction in as much as nothing was pointed out to show that one of the defendants or some of them were personally involved in the alleged construction. The Court, therefore, granted liberty to move a fresh Contempt Motion by providing better particulars. During the last seven months or so nothing has been done in this regard.

4. Notice of Motion No.455 of 2004 sought injunction against the Corporation. During the course of hearing additional documents were placed before the trial court. The Corporation stated that the proposals for regularisation of unauthorised

structures in which the suit property was included at Item No.8 was under its consideration. The trial court noted that this court had given such directions for regularisation of such structures to the Corporation and, therefore, it was beyond its power to stay any such action on the face of the orders issued by this Court.

5. Notice of Motion No.1341 of 2004 has been dismissed by observing that the court cannot act as an investigating agency under Order 26 Rule 1 of C.P.C. It was for the plaintiff to produce the evidence on record in support of his case and the court cannot be used to collecting evidence. It appears that this was an application for appointment of Court Commissioner. The impugned order passed by the court below does not suffer from any errors or any illegality and, therefore, this appeal must fail.

6. The appeal is dismissed in limine.

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(B.H. Marlapalle, J.)